Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

18 April 2013*

(Repayment of taxes levied by a Member State in breach of European Union law — National system limiting the interest payable by the Member State on the repaid tax — Interest calculated from the day following the date of the claim for repayment of the tax — Non-compliance with European Union law — Principle of effectiveness)

In Case C-565/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Sibiu (Romania), made by decision of 14 July 2011, received at the Court on 10 November 2011, in the proceedings

Mariana Irimie

v

Administrația Finanțelor Publice Sibiu,

Administrația Fondului pentru Mediu,

THE COURT (Third Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, E. Jarašiūnas, A. Ó Caoimh, C. Toader and C. G. Fernlund, Judges,

Advocate General: M. Wathelet,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 17 October 2012,

after considering the observations submitted on behalf of:

— Ms Irimie, by D. Târşia, avocat,

— the Romanian Government, by R. H. Radu, R. M. Giurescu and A. Voicu, acting as Agents,

— the Spanish Government, by A. Rubio González, acting as Agent,

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the European Commission, by J.-P. Keppenne, L. Bouyon and C. Barslev, acting as Agents,

* Language of the case: Romanian.

after hearing the Opinion of the Advocate General at the sitting on 13 December 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of European Union law in relation to a national system which limits the interest granted on the repayment of a tax levied in breach of European Union law to that accruing from the day following the date of the claim for repayment of that tax.

2 The request has been made in proceedings between Ms Irimie, a Romanian national, and the Administrația Finanțelor Publice Sibiu (State Finance Administration, Sibiu) and the Administrația Fondului pentru Mediu (Environment Fund Administration) concerning the payment of interest on the repayment of a tax levied in breach of European Union law.

Romanian law

Government Emergency Order No 50/2008

3 In the Romanian legal system, at the time of the facts in the main proceedings, pollution tax for motor vehicles was governed by Government Emergency Order No 50/2008 introducing a pollution tax for motor vehicles (Ordonanță de Urgență a Guvernului nr. 50/2008 pentru instituirea taxei pe poluare pentru autovehicule) of 21 April 2008 (*Monitorul Oficial al României*, Part I, No 327, 25 April 2008, 'OUG No 50/2008').

Government Order No 92/2003

4 The tax procedure was established by Government Order No 92 on the Code of tax procedure (Ordonanța Guvernului nr. 92 privind Codul de procedură fiscală) of 24 December 2003 (*Monitorul Oficial al României*, Part I, No 941, 29 December 2003), as amended ('OG No 92/2003').

5 Article 70 of OG No 92/2003, entitled 'Time-limit for disposal of applications by tax payers', provides:

'(1) Applications lodged by the taxable person pursuant to the present Code shall be determined by the tax authority within 45 days of the date on which they are registered.
(2) Where additional information is necessary for a decision, that time-limit shall be extended for a period from the date of the request for information to the date on which the requested information is received.'

6 Paragraph 1 of Article 124 of OG No 92/2003, entitled 'Rate of interest on amounts to be refunded or reimbursed from public funds', provides:

'As regards the amounts to be refunded or reimbursed from public funds, taxable persons shall have the right to interest from the date following the expiry of the time-limit laid down in … Article 70 … until the date on which one of the conditions provided for in law ceases to apply. Interest shall be paid at the request of the taxable persons.'

Law on Administrative Proceedings No 554/2004

7 Administrative proceedings in Romanian law are governed by the Law on Administrative Proceedings No 554 (Legea contenciosului administrativ nr. 554) of 2 December 2004 (*Monitorul Oficial al României*, Part I, No 1154, 7 December 2004), as amended ('Law No 554/2004').

8 Paragraph 1 of Article 1 of Law No 554/2004, entitled 'Grounds for bringing an action before the courts', provides:

'Any person who considers that one of his lawful rights or interests has been infringed by a public authority, by an administrative measure or by a failure to deal with an application within the time-limit laid down by law, may apply to the competent administrative court for annulment of the measure, recognition of the lawful right or interest invoked, and compensation for damage suffered. ...'

9 Paragraph 1 of Article 8 of Law No 554/2004, entitled 'Subject-matter of the action', states:

'A person whose rights recognised by law or legitimate interests have been infringed by a unilateral administrative measure, who is dissatisfied with the response received to his prior complaint addressed to the public authority that issued the measure, or who did not receive a response within the time-limit ..., may bring an action before the competent administrative court seeking annulment, in whole or in part, of the measure, compensation for damage suffered and, where appropriate, compensation for non-material damage. Anyone who considers that one of his rights recognised by law has been infringed due to a delay in dealing with his application or an unjustified refusal to deal with his claim may also bring an action before the competent administrative court. ...'

The dispute in the main proceedings and the question referred for a preliminary ruling

10 In 2007 Ms Irimie purchased a motor vehicle registered in Germany. In order to register it in Romania, she paid, in compliance with the Administrația Finanțelor Publice Sibiu's decision of 4 July 2008, pollution tax, provided for in OUG No 50/2008, in the sum of RON 6 707.

11 On 31 August 2009, Ms Irimie brought an action before the Tribunalul Sibiu (Regional Court, Sibiu) seeking an order that the Administrația Finanțelor Publice Sibiu and the Administrația Fondului pentru Mediu first, repay the sum paid by way of pollution tax and, second, pay the interest on that sum from the date of payment of that tax.

12 The referring court states that the part of the action concerning the claim for repayment of the sum paid by way of pollution tax does not pose any major problems in view of the judgment in Case C-402/09 *Tatu* [2011] ECR I-2711 and the subsequent case-law confirming that judgment.

13 By contrast, as regards the claim for payment of interest relating to the pollution tax paid, calculated from the date of payment of the tax, the referring court points out that it is not possible to grant the claim by reason of the combined provisions of Articles 70 and 124 of OG No 92/2003. As the referring court explains in its reply to a request for clarification from the Court of Justice, according to settled and unambiguous national case-law, under those articles interest on sums to be repaid from public funds is granted only from the day following the date of the claim for repayment.

14 However, the referring court harbours doubts as to whether such a rule is consistent with European Union law, in particular with the principles of equivalence, effectiveness and proportionality, and with the right to property laid down in Article 17 of the Charter of Fundamental Rights of the European Union, read in conjunction with Article 6 TEU.

15 Accordingly, the Tribunalul Sibiu decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Can the principle[s] of the effectiveness, equivalence and proportionality of remedies in relation to infringements of [European Union] law to which individuals are subjected as the result of the application of legislation which does not conform to [European Union] law, [principles] arising from the case-law of the Court ... and the right to property laid down in Article 6 [TEU] and Article 17 of the Charter of Fundamental Rights of the European Union, be [interpreted] as precluding provisions of national law which limit the amount of damage[s] which could be recovered by an individual who has suffered an infringement of his rights?'

Consideration of the question referred

16 It is apparent from the order for reference that the question referred seeks, in essence, to ascertain whether European Union law must be interpreted as precluding a national system, such as that at issue in the main proceedings, which limits the interest granted on repayment of a tax levied in breach of European Union law to that accruing from the day following the date of the claim for repayment of that tax.

17 Ms Irimie and the European Commission consider that that question should be answered in the affirmative, whereas the Romanian, Spanish and Portuguese Governments claim that European Union law does not preclude a system such as that at issue in the main proceedings.

18 It should be noted at the outset that the Court of Justice has already held that European Union law precludes a tax, such as that imposed by OUG No 50/2008 in the version applicable to the facts in the main proceedings, which has the effect of discouraging the import and placing in circulation in Romania of second-hand vehicles purchased in other Member States (*Tatu*, paragraphs 58 and 61).

19 It should be pointed out, as the Advocate General did at paragraph 19 of his Opinion, that it is not for the Court of Justice to assign a legal classification to the action brought by the applicant in the main proceedings. In the present case, it is for the applicant to specify the nature and basis of her action, subject to the supervision of the referring court (see, by analogy, Case C-524/04 *Test Claimants in the Thin Cap Group Litigation* [2007] ECR I-2107, paragraph 109 and the case-law cited).

20 It is apparent from settled case-law that the right to a refund of taxes levied in a Member State in breach of the rules of European Union law is the consequence and complement of the rights conferred on individuals by provisions of European Union law prohibiting such taxes. The Member State is therefore required in principle to repay taxes levied in breach of European Union law (Case C-398/09 *Lady & Kid and Others* [2011] ECR I-7375, paragraph 17, and Case C-591/10 *Littlewoods Retail and Others* [2012] ECR, paragraph 24).

21 Furthermore, it should be noted that, where a Member State has levied taxes in breach of the rules of European Union law, individuals are entitled to reimbursement not only of the tax unduly levied but also of the amounts paid to that State or retained by it which relate directly to that tax. That also includes losses constituted by the unavailability of sums of money as a result of a tax being levied prematurely (see Joined Cases C-397/98 and C-410/98 *Metallgesellschaft and Others* [2001] ECR I-1727, paragraphs 87 to 89; Case C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR I-11753, paragraph 205; *Littlewoods Retail and Others*, paragraph 25, and Joined Cases C-113/10, C-147/10 and C-234/10 *Zuckerfabrik Jülich and Others* [2012] ECR, paragraph 65).

22 Accordingly, the principle of the obligation of Member States to repay with interest amounts of tax levied in breach of European Union law follows from that law (*Littlewoods Retail and Others*, paragraph 26, and *Zuckerfabrik Jülich and Others*, paragraph 66).

23 In this respect, the Court has already held that, in the absence of European Union legislation, it is for the internal legal order of each Member State to lay down the conditions in which such interest must be paid, particularly the rate of that interest and its method of calculation. Those conditions must comply with the principles of equivalence and effectiveness; that is to say that they must not be less favourable than those concerning similar claims based on provisions of national law or arranged in such a way as to render the exercise of rights conferred by the European Union legal order impossible in practice or excessively difficult (see, to that effect, *Littlewoods Retail and Others*, paragraphs 27 and 28 and the case-law cited).

24 As regards the principle of equivalence, it must be observed that the Court does not have before it any evidence which might raise doubts as to the compliance of the system at issue in the main proceedings with that principle.

25 It appears from the documents before the Court that the system at issue in the main proceedings, which grants interest only from the day following the date of the claim for repayment of the tax unduly levied, applies to all sums to be refunded from public funds, those levied in breach of European Union law as well as those levied in breach of national law; that is a matter, however, for the referring court to ascertain.

26 As regards the principle of effectiveness, that principle requires, in a situation of repayment of a tax levied by a Member State in breach of European Union law, that the national rules referring in particular to the calculation of interest which may be due should not lead to depriving the taxpayer of adequate compensation for the loss sustained through the undue payment of the tax (see *Littlewoods Retail and Others*, paragraph 29).

27 In this case, it must be found that a system such as that at issue in the main proceedings, which limits interest to that accruing from the day following the date of the claim for repayment of the tax unduly levied, does not meet that requirement.

28 That loss depends, inter alia, on the duration of the unavailability of the sum unduly levied in breach of European Union law and thus occurs, in principle, during the period between the date of the undue payment of the tax at issue and the date of repayment thereof.

29 In the light of the foregoing, the answer to the question referred is that European Union law must be interpreted as precluding a national system, such as that at issue in the main proceedings, which limits the interest granted on repayment of a tax levied in breach European Union law to that accruing from the day following the date of the claim for repayment of that tax.

Costs

30 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

European Union law must be interpreted as precluding a national system, such as that at issue in the main proceedings, which limits the interest granted on repayment of a tax which was levied in breach of European Union law to that accruing from the day following the date of the claim for repayment of that tax.

[Signatures]